

JERRY BELLEZZA ET AL.

IBLA 74-13

Decided March 5, 1974

Appeal from decision, AA-8306, of Alaska State Office, Bureau of Land Management, declaring a mining claim null and void.

Reversed and remanded.

Mining Claims: Withdrawn Lands--Withdrawals and Reservations:
Generally

Where a Public Land Order which closed certain lands to all entry under the mining laws is amended to show that such lands are open to location for metalliferous minerals, a mining claim located thereafter, for gold and other metals may not be declared null and void ab initio without a hearing.

APPEARANCES: H. E. Buzby, pro se, and for appellants Jerry Bellezza, Joe Buzby, and Vern Cherneski.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

H. E. Buzby, Jerry Bellezza, Joe Buzby, and Vern Cherneski have appealed from a decision, AA-8306, rendered on May 15, 1973, by the Alaska State Office, Bureau of Land Management, which declared null and void the mining claim known as the Squaw Creek Lode Mining Claim.

The State Office decision recited that the claim was recorded October 30, 1972, in the wrong recording district; is located in T. 6 S., R. 1 E., C.R.M., Alaska; and "traverses" protracted sections 5, 6, 7 and 8. The decision below also stated that Public Land Order 5150, 36 F.R. 25410 1/ withdrew these lands "* * *" from prospecting, location, and purchase under the U.S. Mining Laws (30 U.S.C., Chapter 2)." Thus the State Office held that because the mining claim was located on land which at the time of

1/ The Order appears in the Federal Register of December 31, 1971.

location was withdrawn from mineral entry, the claim was null and void ab initio.

Appellants assert that their claim, in fact a "relocation", was recorded in the proper recording office; that it is not located in T. 6 S., R. 1 E., C.R.M.; and it does not traverse sections 5, 6, 7 and 8 therein. They also assert that the claim was originally located and recorded prior to 1913 by one Harry Buzby, ancestor of two of the appellants. Further-more, they assert their 1972 relocation was due to an earthquake in 1964, and that geochemical and geophysical prospecting from 1964 to 1972 was necessary before their relocation. Appellants contend access to their claim does not cause damage to the environment, nor does it interfere with any Indian occupancy, the nearest being 35 miles away. They also point out that travelers on the nearby Richardson Highway could not see the operations and that the Alyeska Pipeline Route Acquisitions Office has determined, in consultation with them, that there is no conflict with the projected Trans Alaska Pipeline. We note that Public Land Order 5150, supra, withdrew certain public lands in Alaska for a utility corridor for the Trans Alaska Pipeline. 43 CFR 4.24(b).

The record shows appellants' mining claim, assertedly made for gold, silver, zinc, nickel and lead, to have been "relocated" on October 1, 1972, and recorded October 30, 1972.

The State Office decision correctly noted that a mining claim located on land at a time when the land is withdrawn from mineral entry can be declared null and void ab initio without a hearing if the Departmental records show the land so withdrawn. Mickey G. Shaulis, 11 IBLA 116, 117 (1973); Norman A. Whittaker, 8 IBLA 17, 19 (1972).

However, such a summary disposition of the issue of validity of a mining claim is not proper if a claim is located on lands open to mineral location. A mining claim can be declared null and void without a hearing only if there is no dispute as to the record facts underlying the determination of invalidity. Brace C. Curtiss, 11 IBLA 30, 33 (1973).

Among these record facts from which dispute must be absent are the exact terms of withdrawal orders, the physical situs of the mining location, the time of location vis-a-vis the effective time of withdrawal from location, and the fact that the location totally falls within the area of the withdrawal. Id.

Over five million acres of public lands in Alaska were withdrawn for a utility corridor by Public Land Order 5150, supra.

Although some withdrawn lands remained open for location of metalliferous minerals, others were fully withdrawn from the operation of the United States mining laws. Included in these latter lands were those described by protracted description as sections 4 through 8, 17 through 20, and 29 through 33, T. 6 S., R. 1 E., C.R.M., which includes the supposed situs of the Squaw Creek Lode Mining Claim. 2/

However, shortly after the publication of P.L.O. 5150, an amending Order, P.L.O. 5151, 37 F.R. 142, was published. 3/ In this Order, lands described by a protracted description from the Copper River Meridian as sections 4 through 8, 17 through 20, and 29 through 33, T. 6 S., R. 1 E., were added to paragraph 1 of P.L.O. 5150.

As already noted, in the first paragraph of P.L.O. 5150 some withdrawn lands remained open to location for metalliferous minerals. It stated in part:

* * * [s]ubject to valid existing rights, the following described lands are hereby withdrawn from all forms of appropriation under the public land laws except for location of metalliferous minerals under the mining laws (30 U.S.C., ch. 2), * * * and reserved as a utility and transportation corridor within the meaning of section 17(c) of * * * [the] Alaska Native Claims Settlement Act [43 U.S.C. § 1616(d)(1) (Supp. II, 1972)] in aid of programs for the U.S. Government and the State of Alaska * * *. (Emphasis supplied.)

Thus on January 5, 1972 (the date on which P.L.O. 5151 was filed with the Federal Register), the lands involved here were

2/ Several factors militate against accuracy in determining the situs of this claim. The Squaw Creek Lode Mining Claim is shown on the copy of the "relocation" notice, filed by Harry Buzby on October 30, 1972, in the Chitina Recording District, as on a branch of Squaw Creek which crosses the Richardson Highway near Mile Post 54. The claim is described as on "the left limit of Squaw Creek--N.W. from the Highway." Reference to the most recent (1951) topographic map shows Squaw Creek to be bisected by the Copper River Meridian, and thus the western boundary of T. 6 S., R. 1 E. This map, however, was published before the 1964 earthquake, supra, and was not checked in the field.

3/ Published in the Federal Register of January 6, 1972, and corrected at 37 F.R. 528, published January 13, 1972.

restored to location for metalliferous minerals. 4/ Furthermore, subsequent Public Land Orders No. 5182, 37 F.R. 5585, published March 16, 1972, and No. 5190, 37 F.R. 6088, published March 24, 1972, merely added more public lands to those withdrawn in P.L.O. 5150 for the Alaskan utility corridor. Both contained a sentence that:

This order does not otherwise serve to change the provisions and limitations of Public Land Order No. 5150 as herein amended. 5/

Hence it seems obvious that the Squaw Creek Lode Mining Claim cannot be declared null and void ab initio without a hearing. Although certain public lands, of which four protracted sections are supposedly "traversed" by the Squaw Creek Lode Mining Claim, were withdrawn from all entry by P.L.O. 5150 on December 30, 1971 (the date it was filed with the Federal Register), this Order was amended by P.L.O. 5151 on January 5, 1972, to place those sections in the category of lands open to location for metalliferous minerals. Therefore, even though this claim may not be based on a valid right preceding the withdrawal 6/ but should be considered a new location, it cannot be declared null and void ab initio, since it was "relocated" over eight months after P.L.O. 5151 became effective.

In essence, our holding is that where a Public Land Order, which closed certain lands to all entry under the mining laws, is amended to show that such lands are open to metalliferous locations

4/ When a Public Land Order partially revokes a previous withdrawal and no date for the effectiveness is specified, the lands involved become subject to the purposes of the revocation when the Order is filed with the Division of the Federal Register. Edwards v. Brockbank, A-25960 (April 3, 1951).

5/ P.L.O. 5190, supra at 6089, does withdraw some public lands from leasing and entry under the mining laws, 30 U.S.C. § 21 et seq. However, the lands so affected are referred to as "*** all of the above described lands added to or included by the changes made by this order in the lands described by Public Land Orders No. 5150 and 5151 ***." (Emphasis supplied.) Additionally, this paragraph includes the further limitation which makes these withdrawals "*** [S]ubject to valid existing rights and the provisions of prior withdrawals and classifications ***."

6/ See Ernest Alpers, A-30627 (March 10, 1967); J. Everett Nelson, A- 29174 (February 4, 1963); and John D. Archer, 67 I.D. 181 (1960); indicating that in certain circumstances a relocater may have rights based on the earlier location.

under such laws, a mining claim, located thereafter for gold and other metals, may not be declared null and void ab initio.

We need not reach the reasons appellants assign for error in this appeal because this decision is dispositive of the only issue, i.e., whether the Squaw Creek Lode Mining Claim may be summarily invalidated on status factors.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case is remanded to the Alaska State Office for action consistent with our decision herein.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

